

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Respondent,

No. CR S-02-0418 GEB GGH P

vs.

FERNANDO LOPEZ-CUEVAS,

Movant.

ORDER

Pending before the court is respondent's motion for an order finding a waiver of the attorney-client privilege. On November 24, 2009, movant was granted fourteen days to file a response to this motion. Fourteen days passed and while movant filed two other pleadings, he did not oppose this motion.

Generally, when a defendant attacks the actions or inaction of trial counsel in a § 2255 motion, any attorney-client privilege is waived with respect to information pertinent to the allegations. See Bittaker v. Woodford, 331 F.3d 715, 716 (9th Cir.2003) (en banc). Good cause appearing, respondent's motion is granted.

In addition to a finding that the attorney-client privilege is waived, respondent requests that the court order movant's counsel to transmit to respondent all documents relating to their communications to defendant and to order defense counsel to assist respondent by

1 submitting for interviews concerning their work with movant. The court has no authority to
2 order informal discovery. Respondent may petition the court to engage in formal discovery in
3 this federal habeas proceeding.

4 Accordingly, IT IS HEREBY ORDERED that respondent's motion for an order
5 finding a waiver of the attorney-client privilege (no. 180) is granted.

6 DATED: January 20, 2010

7 /s/ Gregory G. Hollows

8 UNITED STATES MAGISTRATE JUDGE

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